

The International Fuel Tax Agreement governs the taxation and reporting of fuel tax liabilities for "commercial motor vehicles" as that term is defined in Section 1.16 of the Motor Fuel Tax Law. (This is a GIL.)

October 3, 2002

Dear Xxxxx:

This letter is in response to your letter received on July 30, 2002. That letter has been forwarded to the Legal Services Division for response. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 (b) and (c), which can be accessed at the Department's website at <http://www.revenue.state.il.us/Laws/regs/part1200>.

In your letter you have stated and made inquiry as follows:

"An interpretation is hereby requested that the Department issue a letter advising that motor vehicles held by a manufacturer or dealer and held for sale which are delivered in "driveaway operations" are exempt from motor fuel tax in that these vehicles are not titled and/or licensed for delivery purposes. These vehicles as of this delivery are not in the stream of commerce. "

"As previously specifically addressed in Section 500.175 and 35 ILCS 505, the exempt status is now being misinterpreted by other states in their respective Audits. These States advise that Illinois needs to issue a Letter of Opinion as to this exempt status to prevent their auditors from disallowing the motor fuel tax exemption. Furthermore, these Auditors agree that with the benefit of a Letter from the Illinois Department of Revenue, they will immediately recognize the exemption/exempt status. "

"Subsequent to your review of this issue, please contact us to pursue the correct treatment of this matter."

Section 500.175, which you attached to your letter, is no longer a part of the administrative code. Its history is somewhat complicated, but basically, it was recodified, effective March 4, 1994, as Section 500.301. The provision about which you have inquired (i.e., the exclusion of driveaways from the definition of "commercial motor vehicle") was not substantively changed in this process, and remained in effect until February 28, 1995. Effective February 28, 1995, Section 500.301 was repealed in its entirety. This repealer was precipitated by Illinois' implementation of the International Fuel Tax Agreement ("IFTA"). Regulations were promulgated to redefine the term, "commercial motor vehicle," in conformance with IFTA. Section 500.100, which contained the new definition of "commercial motor vehicle," became effective on February 28, 1995. We have attached a copy of this regulation for your review.

It is important to note that the old regulations (Section 500.175 and Section 500.301) merely reiterated an exemption that the Motor Fuel Tax Law, itself, provided for driveaways. This exemption

was found at 35 ILCS 505/1.16. Public Act 88-480, effective January 1, 1994, implemented the IFTA and deleted the statutory exemption for driveways. We have enclosed a copy of the section of PA 88-480 that deleted the driveway exemption and provided a new definition of "commercial motor vehicle."

As you can see, there is no longer a specific exclusion for driveways. As a result, whether a driveway is subject to IFTA requirements will depend upon whether it falls within the weight and/or axle requirements in the definition of "commercial motor vehicle" (for purposes of this letter, we are assuming that it doesn't fall within any of the specific exclusions from the current definition of "commercial motor vehicle"). It is our understanding that your inquiry concerns driveway semi-trailer tractor cabs. Generally, it has been our experience that these types of driveways fall within the definition of a "commercial motor vehicle." As you can see from the enclosed copy of Section 500.310, there is even a special rule for placement of decals on such driveway tractors.

We regret that we cannot provide a more specific determination, but hope that the information we have provided is helpful. The Department maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110 (b).

Very truly yours,

Jerilynn Gorden
Sr. Counsel, Sales & Excise Tax